

DECEMBER 16, 2009

KAREN S. MITCHELL
CLERK, U.S. DISTRICT COURTIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

ADRIAN MAURICE THOMAS,

Petitioner,

v.

2:09-CV-0265

RICK THALER,

Director, Texas Dep't of Criminal Justice,
Correctional Institutions Division,

Respondent.

**REPORT AND RECOMMENDATION TO DENY PETITION
FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

On October 19, 2009, petitioner filed with this Court a Petition for a Writ of Habeas Corpus by a Person in State Custody challenging the result of a prison disciplinary proceeding. In order to challenge a state prison disciplinary adjudication by way of a federal petition for a writ of habeas corpus, a petitioner must, at a minimum, be eligible for release on mandatory supervision and have received a punishment sanction that included forfeiture of previously accrued good-time credits.

See Malchi v. Thaler, 211 F.3d 953, 958 (5th Cir. 2000). Petitioner states he is incarcerated pursuant to a September 7, 2007 conviction for possession of a controlled substance.¹ Petitioner thus appears to be eligible for release on mandatory supervision. *See* Tex. Gov't Code § 508.149 (Vernon 2004).

¹ The Offender Information Detail website maintained by the Texas Department of Criminal Justice indicates petitioner is confined pursuant to a August 1991 offense for delivery of a controlled substance and January 2003 and December 2005 offenses for possession of a controlled substance. The Court is unsure of the accuracy of petitioner's representations regarding the date of his offense of incarceration, as neither the offense dates nor the sentence dates for any of his offenses appear to have occurred in September 2007. The offense itself, however, remains possession of a controlled substance and delivery of a controlled substance. Therefore the Court's analysis of the petition remains the same regardless of the date of the offense.

In his habeas application, however, petitioner advises he did not lose any previously accrued good-time credits as a result of the disciplinary proceedings. Consequently, petitioner is not entitled to federal habeas corpus relief and his petition should be DENIED. *See Malchi*, 211 F.3d at 958.

RECOMMENDATION

It is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that the Petition for a Writ of Habeas Corpus by a Person in State Custody filed by petitioner ADRIAN MAURICE THOMAS be DENIED.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 16th day of December, 2009.



Clinton E. Averitte
CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

*** NOTICE OF RIGHT TO OBJECT ***

Any party may object to these proposed findings, conclusions and recommendation. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections is fourteen (14) days from the date of filing as indicated by the "entered" date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(C), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(E). **Any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed** as indicated by the "entered" date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d).

Any such objections shall be made in a written pleading entitled "Objections to the Report and Recommendation." Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).